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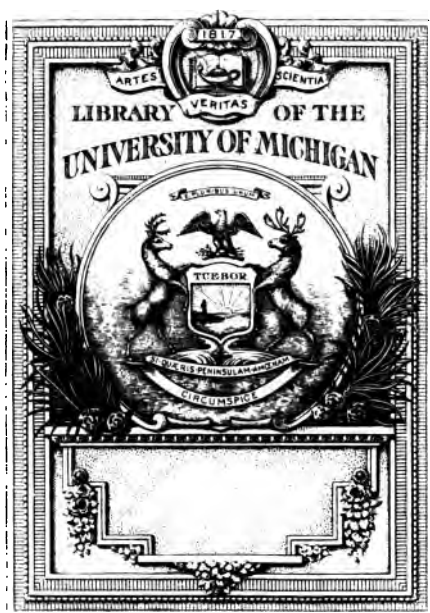
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The Privy Council under the Tudors

THE STANHOPE ESSAY

1907

BY

LORD EUSTACE PERCY

CHRIST CHURCH

"De grands services ont été rendus, des
fautes ont été commises."—*Lamartine*.

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THE PRIVY COUNCIL UNDER
THE TUDORS



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I.

To the student of the history of the English Privy Council the Tudor period is one of quite peculiar interest. It is true that it was not the time of that Council's greatest power, for the days when, under the House of Lancaster, the influence of the King's Councillors had overshadowed alike the Crown, the Parliament and the people, had passed away, never to return. Under the Tudor sovereigns the Council was for the most part little more than a tool. Henry VII. found it at his accession, fallen indeed in prestige and power, but still a strong organisation with a great past and great traditions. He chose it from among all the other institutions of that day to be his instrument for the establishment and extension of his system of rule throughout all England, and, in order that it might be equal to that colossal task, he and his successors developed and strengthened it till it grew under their hands into a powerful body, fit to gather and hold all the threads of administration and

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diplomacy. It is this process of development and strengthening which gives to this period its peculiar interest; for the Council was no new body, it could trace a continuous and consistent existence at least as far back as the minority of Henry III., and its development since that day had been marked by some very distinct characteristics. The most striking of these characteristics had been its constant tendency to delegate its authority to commissions, formed for the most part of members of the Council itself and taking over from it some portion of its judicial or administrative functions. Such had been, before the days of Henry III., the Court of King's Bench and the Exchequer, offshoots of the old Curia Regis, which was itself the parent of the Privy Council. Such had been, in later days, the Court of Chancery and the Court of the Stannaries. All these had attained varying degrees of independence; some, like the Court of King's Bench, had become almost completely emancipated from the control of the Council some, like the Court of Chancery, were on the high road to a similar independence. But the same cannot be said of certain other emanations of the Council the growth of which had been scarcely less marked before the accession of the Tudors. These were 'local councils, set up to deal with emergencies in c living parts of the Kingdom, but owing their authority entirely to the central body, and having, in sequence, only a very limited degree of independence. Calais had its deputy and its Council; Edward about 1470, set up a Council of the Marches of Wales and under this head we may perhaps add the

much older, but yet analogous, palatinate jurisdictions, which dated back to the very early days of the Conquest, and were destined in the future to come into collision with the newer local creations of the Tudors*. These, then, had been the main features of the development of the Council up to 1485; and it was no part of Henry VII.'s policy, or of that of his successors, to depart from the lines laid down by past experience. They continued, and enormously increased, the delegation of the Council's powers to subordinate judicial courts or administrative bodies; but, and herein lies the chief interest of the period, they attempted to check absolutely any tendency to break away from the control of the central authority; and they also did all in their power to bring once more under its influence those branches of the government which, like the Parliament and the judicature, had already severed themselves from it, as well as those old local bodies, such as the Court of Admiralty, which had always enjoyed a certain freedom and independence. [Viewed in this light, therefore, the work of the Tudors with regard to their Council partakes of the nature of a gigantic experiment in extreme centralisation] and its temporary success and ultimate failure under the Stuarts have consequently all the interest attaching to great experiments in government.

It will, then, be the object of this essay first to

* For instance, the Council in the Marches of Wales superseded to a large degree the Duchy of Lancaster and the palatinate jurisdiction of Cheshire, while the Council of the North took nearly all power away from the Palatinate of Durham.

describe the growth of the Council and to point out how each new problem of government was met by a fresh delegation of powers to more or less permanent subordinate commissions, and secondly to present a picture of the working of the great machine brought into being.

II.

Unfortunately, at the very threshold of the subject, we are met by a difficulty. The Privy Council records from 1435 to 1540, are, with the exception of certain papers relating to the reigns of Henry VI. and Henry VIII., entirely missing; and consequently our knowledge of the period, when under Henry VII. and his son the power of the Council was being organised and taking shape, is very limited, and can only be deduced from incidental mention or inference. For the first two years of his reign, Henry VII.'s policy was not formed; he was more or less silent, taking stock of the difficulties to be faced and the instruments to be used. It was not till 1487 that he spoke, but then it was with no uncertain voice. Summoning his Parliament, he declared to it, through the Chancellor Morton, his conviction that the great evil to be grappled with was the frequency of 'Riots and unlawful Assemblies of People and all Combinations and Confederacies of them by Liveries, Tokens, and other Badges of factious Dependance*,' and urged the passing of laws to deal with these. The Commons complied by the passing of the statute 3 Henry VII., cap. 1, entitled 'Pro Camera Stellata,' which provided for the establishment of a Court to deal with all such disorders. Whatever misapprehensions may since have arisen with regard to this Court, it may be said with tolerable certainty that it was nothing more

* Bacon, *Henry VII.* (1629).

nor less than the Privy Council itself, exercising a jurisdiction which it had long enjoyed, but which was now established on a statutory basis, in accordance with the usual custom of the Tudor sovereigns.

From this moment there is never any doubt as to the instrument of government to be used by the Tudors; but even before this there had been indications that the Council was being employed to the full extent of its power. Formed in the first days of the reign not so much of the nobility of the realm as of 'vigilant men and secret,' Morton, Fox, Bray, Poyning, Edgcombe, and Guildford, it had early given a proof of its activity, when the Queen Dowager was imprisoned on the outbreak of Simnel's rebellion, as Bacon tells us, by a 'close Counsell without any legall proceeding upon farre-fecht pretences.' Henry had, indeed, submitted to a statute enacted by his first Parliament abolishing his prerogative of Protection in the different courts of Calais and the Marches; but both in the fourth and in the seventh year of his reign we find the legislature establishing this same prerogative in the case of all men serving in the army abroad; and in the latter year it is expressly vested, not only in 'our soveraigne lord the King,' but also in 'all the lords of his counsaile for the time being. By this time the growing power of the King's Council has become evident; and it is now applied to practical problems of government in two widely different spheres. The troublous times in Ireland made strong administration there imperatively necessary and consequently in 1498 the Parliament of Drogheda enacted, under the direction of Sir Edward Poyning

two statutes giving to the King in Council complete control over the summoning of the Irish Parliament, and the predominant voice both in the initial and final stages of all legislation. Similarly Jersey and Guernsey were placed under the direct control of the King in Council. But besides these local extensions of power, the authority of the Council began during this reign to be applied to redress the inequality of justice arising out of the great expense entailed by legal actions of all kinds. The statutes of the reign are filled with grave indictments of the chicanery of sheriffs and attorneys; and finally, in 1495, it was enacted that poor men might obtain justice free of charge by means of a writ issued by the Chancellor. Here again a need was being felt, and here again the need was satisfied by the formation of a court for the hearing of the pleas of poor men or of servants of the Crown, formed by the authority of the Council and embodying a portion of its prerogative. This was the Court subsequently known as the Court of Requests, which, under the presidency of the Lord Privy Seal and the direction of officers called Masters, we find at work as early as the eighth year of Henry VII. Like the Court of Star Chamber, its jurisdiction was probably much older than the Tudor rule; but it is interesting to observe that, like that Court, it received statutory sanction, at any rate in principle, by this Act of 1495 in the case of poor men, and in the case of servants of the Crown by an Act of 1487, empowering the steward, treasurer or controller of the King's House to try by a jury of '12 sadde men' any servant of the King who might be charged with con-

spiracy to destroy or murder the King or the members of the King's Council.

After Henry VII.'s death his work was carried forward by his son. So engrossed was Henry VIII's mind with foreign affairs throughout the first twenty years of his reign, that he had little time for examination into the needs of his kingdom at home; but, when he turned to domestic affairs and plunged into the work of the Reformation, he found that the machinery of government was unequal to the task. In his new character of chastiser of monastic abuses and his new position as Supreme Head of the Church, it became necessary for him to secure and administer the vast revenues and estates which he had acquired, and, following the precedents set by his father, he obtained from Parliament two statutes, 27 Henry VIII., cap. 27, and 32 Henry VIII., cap. 45. By the first of these a Court of Augmentations was set up to deal with the monastic estates up to that time confiscated—that is to say, estates of a yearly value of less than £200—and by the second a similar Court of First Fruits and Tenths was instituted for the collection of the revenues due to the King as Head of the Church. And in order that there might be no ambiguity a third statute was enacted, 32 Henry VIII., cap. 20, expressly granting to the Court of Augmentations all 'liberties, franchises, privileges, and temporal jurisdictions which the late owners had used and exercised lawfully.' In another branch of the Royal revenue, Henry found that he was being defrauded of the 'great rents, revenues and profits' due to him in his character of guardian of wards, of

'ideottes and fooles naturall' and of 'women being his graces' widowes,' and consequently he obtained by the statute 32 Henry VIII., cap. 46, the establishment of the Court of Wards, for the supervision of all such matters. Yet another similar body was established by the statute 33 Henry VIII., cap. 39, which consolidated the authority of the King's officers in certain castles, estates, and districts 'as well in England and Wales as in Calais and the Marches,' by creating a Court of Surveyors with jurisdiction over all 'possessions, lands, tenements and other hereditaments being, in any part, parcel or member' of the Crown. All these four courts were directly under the control of the Council; the Chancellors of the Augmentations and of the Tenths were usually, if not always, members of it; and its records are full of communications with them on matters of the most minute detail.

It is clear that by this time the Privy Council had gained a grasp over every department of government, and that the royal policy could be carried out without fear of miscarriage through the vast machinery of which it had come to be the centre. But there were two more measures necessary to the completion of that machinery. The conciliar bureaucracy was supreme in Calais, in Wales, and in Ireland—that is, in all the outlying parts of the United Kingdom except one. On the Scottish border alone the government was in the hands of a powerful Warden of the Marches, for whose loyalty there was no guarantee. A partial remedy was devised in 1522 when a lieutenant and a secret council were sent to the North.

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In 1525 another step was taken by the appointment of Henry's natural son Fitzroy, Duke of Richmond, as lieutenant-general of all the lands north of the Trent, but in 1532 he was recalled, and his council became co-partner with the Earl of Northumberland in the government of the Border, under the name of the Council of the Marches. But the Pilgrimage of Grace soon shook the King's confidence in the Percy family; and after the country had been pacified between January and September, 1537, by the Duke of Norfolk and a provisional council, a permanent and definitive 'Council of the North' was appointed 'for the conservation of those countreyes in quiete and the administration of common justice.' The powers given to this body were very wide, and they were under the direct control of the central Council. But the second measure mentioned above was even more important. The Council had been given to a large extent the direction of the administrative work of the Reformation, throughout the reign of Henry VIII.; it had taken its part in dragooning bishops, clergy, and laity, and in driving them from the fold of Rome into that fold over which the King of England had determined to preside. It had experienced little difficulty in freeing the English Church from the yoke of Rome; few men had objected to the destruction or the plunder of the monasteries; the bands of discipline had indeed been most effectually relaxed, but who should tighten them again? England had thrown off her allegiance to the Pope, who should bring her into allegiance to the Supreme Head of the Church? The answer to that question is the same a

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the answer to all the great problems of the 16th century. By two statutes, 31 Henry VIII., cap. 14, and 32 Henry VIII., cap. 15, the Crown was empowered to nominate commissioners to inquire into and to punish heresy. Edward VI. and Mary made use of the power thus placed in their hands, but it was not till the Act of Supremacy in the first year of the reign of Elizabeth that the principle was put permanently into practice. At intervals, dating from July 20th, 1559, commissions were issued to a court composed of prelates, councillors, and others, giving them wide general powers for enforcing the Acts of Supremacy and Uniformity, and also for the punishment of immorality and other ecclesiastical or semi-ecclesiastical offences. During the reign of Elizabeth these commissions mainly had reference only to the province of Canterbury, in which Wales was included, different commissioners being appointed for Ireland and for the province of York. But in whatever province they had jurisdiction, their action was always under the supervision of the central Council, of which the commissioners were themselves often members.

Nothing has as yet been said of the Council of Wales and the Marches under the Tudors. At the beginning of this essay it was mentioned as having been founded by Edward IV., and this view is probably correct. Though we know little of its early history, it seems to have originated in the authority, granted about 1470 to the Prince of Wales' Council*, to restore order and good government in the Principality.

* Miss Skeel, *The Council in the Marches of Wales*, pp. 28, 29. (Girton College Studies, II., 1904.)

pality. This authority was renewed by Henry VII., but it was apparently not until after the death of Prince Arthur in 1502 that the Council of the Prince of Wales developed definitely into the Council of Wales and the Marches; and it only received statutory sanction in the reign of the Second Tudor by the Act 34 and 35 Henry VIII., cap. 26, which provided that 'there shall be and remaine a President and Counsaill in the saide Dominion and Principalitie of Wales and the Marches of the same . . . whiche President and Counsaill shall have power and auctorytie to here and determyne by their wisdoomes and discreacions such causes and matiers as be or hereafter shall be assigned to them by the King's Ma'tie, as heretofore hath been accustomed and used.'

X We have now completed our sketch of the extension of the Council's power under the Tudors. We have seen that that extension was obtained by means of the establishment of subordinate councils under the control of the central body.) But it must not be forgotten, that to the student of the history of the Privy Council these subordinate organisations only have an interest in as far as they were the instruments of that Council in the different departments of government; and that as soon as they break away from the parent body they cease to be within his sphere of inquiry. It will, therefore, be well to follow out the history of the central Council itself as it is depicted in its own records, and only to describe the Courts that emanated from it, as we find evidence of their being controlled and instructed by the Sovereign's Councillors themselves.

III.

We know little of either the constitution or the procedure of the Council prior to the year 1540. From Bacon's *Henry VII.*, however, we may infer a few things with regard to it. It seems to have been a somewhat elastic and ill defined body, for, whereas the King is mentioned as renewing his promise to marry the Lady Elizabeth before his Council 'and other principal persons,' he is also said to have concealed his true intentions with regard to the French war, even from his Privy Council 'except to two Bishops and a few more.' There appears, then, to have existed a circle within and a circle without the ordinary limits of the Council; and the question is further complicated by the occurrence of Great Councils, attended by all the lords spiritual and temporal, such as that which assembled at Westminster on October 24th, 1496, and granted the King £120,000 to be used against the Scots. This was not a Parliament, for though it was attended by burgesses and merchants from the most important towns, its vote of money had subsequently to be confirmed by Parliament. The chief duty of the Privy Council proper seems to have been diplomatic, for it is frequently mentioned as interviewing foreign ambassadors; but that it could also exercise very wide judicial powers is proved by Bacon's remark that 'the Council Table

intermeddled too much with Meum and Tuum, for it was a very court of Justice during his time, *especially at the beginning.* (These last words suggest that the Act 3, Henry VII., cap. 1. was only designed to emphasise temporarily the jurisdiction exercised by the Council in the Star Chamber in order to meet the exigencies of a time of great unrest, but was not so much put in force in Henry's later and quieter years.

X₁ | As to the constitution of the Council, we are told plainly that its members were chosen exclusively for high ability, but that, when so chosen, they received Henry's confidence and were encouraged to give advice.) We can, however, detect even at this early period the germs of that tyrannical action which is so plainly visible in its later history; for we hear of the support which it gave to the exactions of Empson and Dudley, and it appears to have been accustomed to send letters to the judge dictating the verdicts that were to be given.

The first document which can be said to present us with a clear picture of the Council is that which contains the Regulations for the better Government of the Royal Household in 1516. This provides that 'to the intent that as well matters of justice and complaints touching the grieves of the King's subjects and disorder of his Realm . . . as also other great occurrences concerning his own particular affairs, may be better ordered and with his grace more ripely debated, digested and resolved . . . it is ordered and appointed that a good number of honourable, ²sad, wise, expert and discreet persons of his Council shall give their attendance upon his most

royal person'; and there follows a list of twenty persons who are directed to fulfil this function, and of whom nine—mentioned by name—are to be always with the King. If, however, some of these cannot attend, four of them—also mentioned by name—are commanded to attend on the King's person without fail.* Accordingly it was customary during the reign of Henry VIII. to hold two separate Councils, one with the King wherever he might be, and one sitting at Westminster; though the proceedings of the former have alone been handed down to us in the Privy Council Records. We have, however, some of the correspondence that passed between the two, and it seems to have been the custom for the section travelling with the King to report formally on its proceedings to the stationary body on their return from a tour.

On August 10, 1540, occurs the first entry in the Records which give us most of our information with regard to the business transacted by the Council. It directs that a clerk should be appointed to register the proceedings—or at any rate such proceedings as were thought fit—'in a booke to remayne always as a leger' and to this office was sworn 'Willum Paget late the quene Secretary †.'

But before examining the writings resulting from the labours of William Paget and his successors, it will perhaps be well to glance at a much vexed ques-

* *Proceedings and Ordinances of the Privy Council*, edited by Sir Harris Nicholas (1837), Vol. VII., introduction, pp. v.-vii.

† *Proceedings and Ordinances of the Privy Council*, August 10, 1540.

tion, namely, the exact status of certain persons who are mentioned in these records and elsewhere under the name of 'the King's Ordinary Councillors.' Those who seem to have held this office about the year 1540 were the Bishops of London and Westminster, Lords Windsor and St. John, Sir Robert Southwell, Sir William Essex and Dr. Peter. They appear to have been sworn to the King's Council *, but they are never mentioned among the list of members attending a meeting †; they seem sometimes to have attended the sittings of the stationary portion of the Council at Westminster, but even then they do not always sign the communications sent to the Council with the King. The Masters of Requests were apparently often Ordinary Councillors ‡; and certainly Ordinary Councillors are frequently mentioned as being sent on special commissions more or less important; and they also frequently received promotion to the rank of Privy Councillor. Thus Dr. Peter was appointed to inquire into a riot in Surrey; Southwell was sent as a joint-commissioner with Sir John Baker, a Privy
inances.


* *P. and O.*, October 5, 1540, and October 3, 1540.

† When they attended the Privy Council it was to deliver reports, e.g. *P. and O.*, November 6, 1540, and January 21, 1541.

‡ At any rate under Henry VIII. The chief function of the Masters of Requests was to receive petitions presented to the King; and on October 6, 1540, the Council put this duty in the hands of certain *ordinary Councillors*. Also in the list of 'such Counsaylors as sate in the Court of Requests in the tyme of King Henry the eighte' among the Burghley Papers, printed in *Select Cases in the Court of Requests, 1497-1569* (Selden Society, ed. I. S. Leadam, 1898), p. cv. There are seven persons described either as 'miles ordinar' or 'armiger ordinar,' two of whom are Robert Southwell and Doctor Peter. The latter, we know, was sworn to the King's Council on October 5, 1540, and at the same time appointed Master of Requests.

Councillor, to Calais; and Lords Windsor and St. John both became important personages in the Privy Council itself. Taking all these facts together, Sir Harris Nicolas in his preface to the seventh volume of the *Proceedings and Ordinances of the Privy Council*, comes to the conclusion that nothing can be said with certainty except that these Ordinary Councillors were not full-blown Privy Councillors.

There are, however, one or two curious facts to be considered. We have already mentioned that the Masters of Requests were usually Ordinary Councillors. Now, in April, 1541, Sir Robert Southwell was appointed a member of the Council of the North; and on April 17, 1539, Henry VIII., in a letter to Lord Lisle, Deputy of Calais, twice calls the Council of Calais 'our ordinary Counsaill *.' Thus the members of three of the greatest bodies subordinate to the central Council were, at any rate sometimes, individually Ordinary Councillors, and, at least on one occasion, the members were collectively called by that name. This points to the conclusion that there was under the Central Council a sort of Civil Service composed of trustworthy persons, who, having taken an oath, were employed in any special or extraordinary work, and, if found to be capable men, were sent to undertake local work as members of one of the regular councils, and might eventually be raised to the dignity of a member of the Central Council itself.



* Letter printed in *The Chronicle of Calais*, edited by J. G. Nichols and published by the Camden Society (1846), p. 184.

IV.

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Having now traced the growth of the Council's power, and summarised the few facts that can be ascertained about it during this period of expansion, we are in a position to describe the working of the machine in all the various functions it was called on to perform. Those, however, who go to the Privy Council records in the hope of finding there the deliberations of the Sovereign's Ministers on questions of high policy, will be disappointed. The Crown was, in Tudor days, entirely its own Minister, and Henry VIII. kept much of his diplomacy, at any rate, from Wolsey himself. But even when such matters were referred to the Council, the proceedings are not recorded; the accounts of certain days are left absolutely blank, especially when it is stated that the Council was with the King; and no entries relating to debates or deliberations can be found. That such debates did take place, and that there was much freedom of discussion seems certain, and we may adduce as proof a document in the Somers Collection of Tracts* which purports to be the speech of a Privy Councillor at the Council Table, strongly opposing the King's assumption of the title of Supreme Head of the Church; but whether this be so or not, it is a fact that there is no mention of such matters in the Records themselves. All that is to be found there, is the picture of a gigantic centralised executive working

* Somers Collection of Tracts (1809), Vol. I., p. 38.

without haste or rest, making its authority felt in the most minute details of government in the furthest corners of the realm, and occupying itself alike with the most petty and the most important administrative duties. Yet this picture is of intense interest, for it is not too much to say that the work done at the Council Table energised the whole of English public life throughout the Tudor period; and if anyone would know why England was able to preserve herself from invasion or to survive the troubles of the Reformation, he cannot do better than go for information to the Acts of the Privy Council.

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Let us take the machine as it stood at the end of Henry VIII.'s reign, between the years 1540 and 1547. Under different sovereigns, as we shall see, its character varied considerably, and in these years it was perhaps more than usually under the complete control of the King, who, since the fall of Cromwell, had preferred to fill his Council with smaller men and to give his confidence to no one individual. But on the whole it was at this time very much what it continued to be throughout the whole period, and the picture which we shall find here does not need very much modification when we come to later days. It has already been said that the King's Councillors made their power felt in the furthest corners of the realm. This may seem an incredible assertion, but it is true. A Board of from twenty to forty men held in their hands, from 1540 to 1603, all the threads of administration, to them flowed a continual stream of information, and from them came an answering stream of instructions and commands. The two

methods by which this was made possible have already been mentioned. By sending commissioners to gather local information and to do local work, a hold was obtained on every county in England. These commissioners might either be entrusted with some local duty, as were the Commissioners of Musters *, of the Beacons†, of the Sewers in Kent and Sussex ‡, or they might merely be appointed to enquire into a special case, as were the Bishop and Mayor of Chichester, Master Knight and Mr. Wright of Southwyke for 'the triall owt off an author off a certayne seditious bill founde in the open felde beside Chichester §.'

These commissions are analogous to those issued regularly to the Justices of the Peace, and they form a part of the same systematic scheme of government. But they are all of vastly less importance than the great permanent Boards already mentioned, which had been established in Calais, Ireland, Wales and the Scotch Marches, by the authority and under the control of the Council. To describe these bodies minutely would demand volumes, but a sketch may be given in a small space of their general working; Calais, the oldest of them, being for the sake of convenience taken first.

In 1540 Henry had experienced some difficulty about the government of his continental possessions, and he had, in the early part of that year, been obliged to

* *Acts of the Privy Council*, edited by J. R. Dasent (1890), Vol. I., August 29, 1545.

† *A. P. C.*, Vol. I., June 27, 1546.

‡ *P. and O.*, October 13, 1541.

§ *A. P. C.*, Vol. I., September 10, 1542.

disgrace the Deputy, Lord Lisle, on account of the encouragement he had given to Popish practices, according to the report of a commission sent from England under the Presidency of the Earl of Sussex. Lisle had been succeeded by Lord Maltravers, and it is during the term of office of this nobleman that we find two very typical instances of the way the Central Council worked with and through its local Boards. On August 28, 1540, the Deputy General, the Lord Chamberlain, the Lieutenant of the castle of Guisnes and 'others the King's highness counsailours in Calays,' met together to consider the question of the demolition of Cowbridge—a bridge built by the French and infringing on the territory of the English Pale. This demolition was decided upon by the 'kinges maejsties pleasure in that behalf lately signified to the said lord deputies and counsailors of Calays, by the right honorable lordes of the kinges highnes' counsail about his majesties person in their lettres dated at Hampton the 10th of Aug.*' On August 10 occurs the entry in the proceedings of the Privy Council, but no mention is there made of these letters. It is, however, recorded that on October 14 a letter was received from Sir John Wallop, captain of the castle at Calais, telling of the intention of the French to rebuild the bridge; that on October 15, Henry VIII. defended his action to the French ambassador; that on October 17 a letter from the Deputy at Calais reported that the bridge had

* For this and other documents relating to the Council at Calais see *The Chronicle of Calais*, mentioned before, pp. 191-202 and p. 47.

been rebuilt and again destroyed; and that on October 18 letters were sent bidding the Deputy do so again, if the bridge should ever be built a third time *. Eventually the French king communicated to Sir John Wallop his appointment of commissioners to discuss the subject with any one whom the English king might appoint, and this communication was forwarded to the Privy Council and received on December 25.

But it was not only on important questions such as these that the local body appears as the agent and the instrument of the Central Council. There is extant a description belonging to the year 1541 of certain works then in progress at Calais and Guisnes. We are told that the numbers of labourers at Calais and Rysbank amounted to 939, and at Guisnes to 1,492; and that the total cost of the operations was £1,262 2s. in the former case, and £1,598 4s. 2d. in the latter.

✓ Now in the proceedings of the Privy Council we find that these works were directed in the most minute manner from England. For instance, on August 15, it was ordered that 'all the workmen lately working upon Dublyn bulwark at Calais should be converted to the works at Guisnes,' and £5,000 were sent over 'for the advancement of the said works,' of which £1,000 were to be paid in wages at Calais and Rysbank, £1,000 at Guisnes, and £1,600 were to go to the surveyor. Of these last £1,600, £600 are to be expended on 'the furniture of see cole to serve for this present yere and the yere next cumying.' In judicial matters also the Central and the local Council

* All in *P. and O.*

worked together in a remarkable degree. For instance, two of the last entries in Richard Turpyn's Chronicle of Calais, deal with two cases of this kind. The first relates how John Butler, priest, was sent to the Flete on August 10, 1539, but we know from the Proceedings of the Privy Council that the Deputy and Council of Calais referred this matter to England, asking what they were to do with Butler's goods, and that they received instructions from the Privy Council. Then on April 10, 1540, an account is given of the execution of two priests, both former officials of Calais, who were brought out of England to Calais, and there judged and put to death. There is a note in the margin to the effect that these two had already been 'araigned in the Guild hall in London and condemned for the Pope's supremacy,' and as it is certain that ecclesiastical cases were under the control of the Council in England, and that for judicial purposes that Council sometimes sat in the Guild Hall *, we can only conclude that these two men had been judged by the authority of the Central Council, and were then sent to the local one for punishment. It also seems to have been usual for individuals to appeal to the Privy Council on the most trivial matters. For instance, on August 22, 1540, such an appeal was answered by a 'letter of justice' adjudging a dispute between two people over £6 13s. 4d. and 106 acres of land †; and the reader is sometimes

* See *Machyn's Diary*, 1552. 'The vii day of Juin the Duke of Northumberland and dyvers of the kynges Counsell sat at yeld-hall [to hear] serten causes.'

† P. and O.

startled by the minute knowledge of affairs at Calais shown by the Council in England—a knowledge apparently not derived from the reports of the Deputy or his colleagues. Thus on October 4, 1542, 'Letters were written to my Lorde Deputye off Callais to sende to the Kinges Hignes a certayne letter written to him from the Capitayne off Dieppe towching a certheyne treux to be taken betwene the fishermen off both parties during hering time*.' The wording of this entry indicates that the information here acted on by the Council was obtained from sources which, whether private or official, had nothing to do with the Deputy himself; and it is perhaps not rash to conclude that the authorities in England had their own methods for checking the reports of the Local Board. Nor did the Privy Council always communicate its orders through the Deputy and his colleagues. We have a list of 'Le Counsaill' at Calais belonging to 1533. It includes only the Deputy, the High Marshal, the comptroller, the knight porter, the vice-marshal, and the lieutenants of the Castle, Rysbank, Newnhambridge, Hampnes and Guisnes. Yet the Proceedings of the Privy Council are full of notices of letters written to the surveyor, an official apparently directly under the orders of and answerable to the Central Body; although, as noticed before, other officials, such as the treasurer of the works at Guisnes, are only dealt with through the Deputy.

These last characteristics may be noticed even more clearly in the dealings of the Privy Council with the

* A. P. . . ., Vol. I.

Scottish border. All the Northern Counties were nominally under the control of the President and Council who sat at York, but the Wardens of the West, Middle and East Marches and also the Keeper of the lawless district of Tynedale were constantly in direct communication with the Central Body; and even more remarkable is the frequent mention of smaller Councils set up in areas withdrawn from the jurisdiction of the great local Boards—for instance, at Berwick *, Boulogne †, and Newhaven ‡, all of which are mentioned in the year 1547. ✕

Some time has been spent over the government of Calais, for it is a very good type of the methods of local government employed by the Tudors. We have, it is true, only glanced at Calais at a time when affairs were moderately quiet and no great crisis had to be faced. In more stirring times the relations of the Privy Council to its subordinates naturally underwent a certain change, and the communications between them are at once more important and more interesting. But in more or less tranquil days the story of the councils in Ireland, in Wales, and in the North is very much the same as that which we have just been studying. It is the story of good work done by strong trustworthy men on the spot; but it is ✕

* A. P. C., Vol. II., Appendix, pp. 476-7.

† A. P. C., Vol. II., Appendix, p. 510.

‡ A. P. C., Vol. II., Appendix, pp. 437 and 439. It is interesting to compare the list of the Council at Newhaven on p. 439 with that of Calais given above. There are seven members mentioned *i.e.*, the Deputy Lord Stourton; the Knight Porter; the Marshal; the Secretary; the Gentleman Porter; the Clerk Comptroller; and the Warden of the Ordnance.

also the story of a tireless government at home, which even in the midst of the regulation of domestic affairs would allow no real freedom of action to its subordinates, and, while using them for the crushing out of local disorders and the strengthening of the outlying portions of the kingdom, demanded that their work should be constantly submitted to the King's Ministers for approval, and that they should be always content to be overridden in the smallest as well as in the most important matters if their views did not happen to coincide with those of their superiors. There was none of the reverence, so common in modern times, for expert opinion or for the advice of 'the man on the spot.' On their shoulders devolved, indeed, the straightforward work of administration; but, if they should presume to conduct their own policy in the conviction that they were better judges than those at home, they received reprimands impossible either to contradict or ignore. If a summary is needed of the principles which regulated the actions of the Tudors with regard to their local commissioners it cannot be better given than in the words of a letter from Lord Lisle and the Council of Calais to the King: 'With the grace of the Lord,' they write, 'we shall do all that is possible for us to do; and the rest is to be considered by your highness and council, how that which we cannot do may be brought about, according to your mind and pleasure.' The local officers were called upon to do 'all that was possible for them to do'; and consequently much more freedom would be given to a really efficient body of men. The work that might

be done by such a body is well shown by all that was accomplished in Wales between 1534 and 1543 by Rowland Lee and his Council *. They reduced the Welsh marches from a state of anarchy to a condition of order and good government, and they acted much on their own initiative in such matters as the repair of the Welsh castles, but still their reports to Cromwell were regular and detailed, and they frequently received apparently unsolicited instructions from the Privy Council with regard to special judicial cases, as well as with reference to the strengthening of Milford Haven and the improvement of the breed of horses.

When we see the amount of local work attended to by the King's Council, and when we remember that what it has been described as doing with regard to Calais and Wales, it did also in the case of Ireland and the North, we are inclined to suppose that it could not have had much time for other work. But no supposition could be more erroneous. Through its hands passed a mass of judicial matters, as multifarious in nature as they were enormous in number. It acted as the arbitrator of petty quarrels, the judge of ecclesiastical cases, the examiner of charges of treason, the censor of publications and sometimes of plays. Its records are full of recognisances entered into for varying sums of money by offenders as surety for their good behaviour. The punishments it inflicted varied from long terms of imprisonment to summoning the prisoner and administering to him 'a good lesson.' We find it sending instructions to

* Miss Skeel, *Council in the Marches of Wales*, pp. 59-80.

the sheriff with regard to the punishments to be meted out to certain murderers; and, at any rate in later days, it administered torture to serious offenders. And besides all this, communications passed between it and the four subordinate courts before mentioned, of Wards, Augmentations, Surveyors, and First-fruits. The Chancellor of Augmentations and First-fruits were members of the Council itself; but the communications to all four courts are mostly addressed to their Treasurers, and, being concerned with money payments to be made to certain persons, are of comparatively small interest.* The Augmentations was by far the most important, for it frequently had charge of the lands of attainted persons or suppressed monasteries, and the Council often directed its Chancellor as to their survey or sale. To add to all this, the commissioners appointed by the Council for particular purposes, such as the enforcement of the Six Articles, needed constant supervision and direction; piracy had to be put down; and trade carefully fostered.

seem All this may seem petty and uninteresting enough, but such work is absolutely necessary to the government of any country, and when it is united in the hands of one body, nothing but very high ability and enormous industry can make the wheels of the machine move as they should. But sometimes, in the midst of its routine, the Council gives us a glimpse of the energy and genius for organisation which it was capable of bringing to bear in a crisis. At the begin-

* The Council used these Courts as depositories of public money to the great confusion of its financial affairs.

ning of August, 1545, a French attack on England was expected. The Council had been engaged in the work of organisation. Lord Surrey, at the head of 5,000 men, and the Lord Admiral were in readiness to set out, the one for France, the other, to look for the French fleet. But with characteristic coolness the Council sent letters to these two on August 10, enjoining them not to move until they received further orders. The very next day, however, the Council at Petworth, only six members being present, received news that two hundred French ships were off Rye. The Lord Admiral was at once bidden to put to sea, letters were written to the Warden of the Cinque Ports, Sir Thomas Seymour, and all the Justices of the County of Sussex, telling them to prepare for a battle, the Council in London was directed to despatch arms and ammunition to the North and to 'hast forward the Caravell and the George Evangelist upon the Thames,' the Lord Deputy of Ireland was communicated with about the Irish Kernes and Galloglasses, and the Deputy at Calais was ordered to make ready to receive from England an army of 25,000 men. At the same time letters were sent to three officials, dealing with various financial affairs *. Such a grasp of all the details of the defence in three of the most distant parts of the kingdom—Calais, Ireland, and the North—as well as at the centre of operations in London and Sussex, is nothing short of marvellous and is a proof how effective must have been the channels through which the Council obtained

* *A. P. C.*, Vol. I., August 10 and 11, 1545.

its information, and how well they could bear the strain of a great crisis. It is for entries such as these that the Council's records are really worth studying; they light up for a moment the monotony of their pages with a flash of genius, and possess a dramatic as well as an historical interest which cannot be surpassed.

X Enough has now been said to give a fair idea of the way in which the Privy Council ruled the English dominions in the last years of Henry VIII. None can deny the harshness of its judicial proceedings, or the injustice of its interference with the liberty of the subject; but these faults were at least redeemed by the firmness of its rule in the most disorderly portions of the kingdom, and by the security from foreign attacks afforded to the whole country by its vigilance. Yet all its actions bear the impress of the strong hand and the firm will of the King himself, and in 1547 that hand was taken from the helm, and that will ceased to give to England her laws and her administration.

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The effect of the change was only too clearly visible. Those who have an admiration for the Tudor Council, who appreciate the immense and enduring work that it performed and the way in which it guided the country through the most critical period in its history, will be tempted to pass over in silence its actions under Edward VI. For they are not attractive reading. Conciliar government must always have its dangers.—it needs a strong hand to guide and control it—it cannot work without a leader at its head. In this case, at any rate, the words spoken by Strafford in later days are true: 'The authority of a king is the keystone which closeth up the arch of order and government, which contains each part in due relation to the whole, and which, once shaken or infirmed, all the frame falls together into a confused heap of foundation and battlement of strength and beauty.' (In Edward VI.'s reign the authority of a king was lacking.) The sixteen executors who had been appointed by Henry VIII. in his will took for some time the chief place among the other Councillors; but they can hardly be said to have fulfilled their trust. The dominant figure at the Council Table was, to begin with, the Duke of Somerset, and, after his fall, the Duke of Northumberland; but however superior the personal character of the former may

have been, the evils that attended the rule of both were very nearly the same. Corruption and self-seeking ran riot at the centre, and infected all the departments of government. On the authority of Paget, who professed to be the depositary of the last bequests of the late King *, lands and revenues were dispensed broadcast to members of the Council and their subordinates, and orders sent to the Court of Augmentations to that effect were frequent. The decline and fall of the Protector, was an opportunity for a renewed scramble on the part of the Dudleys, who took care that their rise in power should carry with it a rise in wealth. At the same time the extravagance of Somerset's public policy at home and abroad entailed the raising of money by means more or less disreputable; and the coinage was accordingly more than once debased †, the lands of chantries and guilds were confiscated by Act of Parliament, the repayment of loans was put off at a ruinous expense, and, to crown all, a considerable portion of the fleet was paid off, laid up, or even sold. Accused persons were mulcted of enormous fines, a source of revenue which the factions in the Council made only too prolific, as, for instance, in the cases of Lord Southampton, Lord Arundel, and the Protector's friends. The corruption and the confusion in the governing body itself resulted in corresponding evils throughout its whole organisation, and we find the finances of Ber-

* *A. P. C.*, Vol. II., p. 15.

† With, of course, the most disastrous effects. As an example of this and of the arbitrary action of the Council, see *A. P. C.*, Vol. III., p. 272.

wick in a state of disorder, an officer of the Mint presenting unsatisfactory accounts, and auditors appointed throughout the country to check the expenditure of money. Indeed the financial arrangements of the Council had always been its weakest point; they were complicated and entangled, and when in 1552 it was necessary to take stock of the situation, no less than nine people had to be communicated with, all of whom had been used as depositaries of public money. Among these we find, as we should expect, the officials of the Exchequer, the Wards, the Augmentations, and the Tenths, while the five others are the Treasurers of the Mintes and the Chamber, the Receiver of the Duchy, the Clerk of the Hanaper, and the Merchants of the Staple*.

(Along with all these new abuses, the old ones that have been noticed under Henry VIII. are only too evident; the judicial proceedings of the Council were to the full as unjust, its religious intolerance as overbearing, as in the previous reign; and the story of its persecution of the Princess Mary reveals in the clearest light its own pettiness and cruelty, as contrasted with the courage and straightforwardness of its victim.) Nor can we pass over in silence the attempts it made to control Parliament, alike by recommending government candidates to the sheriffs, and by bribing the opposition in the Commons. It was only by this last method that they obtained the passing of the Bill for the confiscation of the guilds, and an attempt at least was made to foist Sir John

* A. P. C., Vol. IV., March 12, 1552.

Baker on the electorate of Kent in 1547 *. Repeated efforts were made to bring about religious uniformity, and among many instances may be mentioned the burning of Joan of Kent for heresy, and the imprisonment of the Bishop of Chichester for refusing to take down the altars in his diocese.

But repulsive as is the spectacle exhibited to us by the majority of the Council's actions, yet it did not wholly depart from its traditions, and there are several redeeming points to be noticed. The defences of the country occupied much of its time, and though retrenchment prompted the reduction of the garrison at Calais, the state of Portsmouth was examined and works undertaken there, which appear to have cost much money †. According to its lights, too, the Council attempted to protect trade, and keep down prices. Cases of piracy were sent to be tried in the Admiralty Court, a body subordinate to and controlled by the King's ministers; and efforts were made to regulate the price of corn and victuals both by orders to that effect sent to authorities like the Mayor of London, and also by the compulsory issue of licences for an enormous number of articles. (However mistaken such methods may have been, they showed a real feeling for the distress prevalent in the country, and redeem the Council from the charge of complete selfishness.

None who examine the disorder and corruption of

* A. P. C., Vol. II., Appendix, pp. 516 and 518.

† As early as March 1, 1547 (A. P. C., Vol. II.), the Treasurer of the Augmentations was ordered to pay out £1,000 for this object.

these years, can be surprised at the outbreak in which they culminated. Freed for so long from any efficient control, the Council naturally attempted to place a puppet on the throne; and the rebellion in favour of Lady Jane Grey was a fitting conclusion to the actions of the central government under Edward VI. It is not the object of this essay to give a history of England under the Tudors; and it may, therefore, be excusable to pass quickly over the period between 1553 and 1558. During Mary's reign the Council exhibited few, if any, new characteristics; the worst features, indeed, of the late government disappeared on the accession of a stronger sovereign, but the legacy of disorder and debt which the Duke of Northumberland and his colleagues had left behind them, forbade any efficient provision for the defence of the country, and the loss of Calais is but a commentary on what had occurred in the preceding reign. The Council must be honoured for its attempts to clean out the Augean stables of the administration by such drastic measures as the disgrace of the fraudulent Under-Treasurer of the Irish government, but it must also share whatever blame is to be attached to Mary's persecutions—to the execution of Lady Jane Grey or to the treatment of Cranmer.

But before passing on to the reign of Elizabeth, there are one or two developments to be noticed in the constitution of the Privy Council. The tendency of that body from the very earliest times had been, as was said at the beginning of this essay, to separate particular portions of its jurisdiction from the rest and to delegate them to specialised bodies.

X the death of Henry VIII. we notice a gradual growth in the number of permanent commissions appointed in different parts of the country. Temporary commissions of enquiry, such as those sent to Calais in 1539 to examine Lord Lisle's proceedings, and to the Border under Edward VI. to partition the Debateable Land *, had always been common; and certain permanent ones had also existed, such as the one for Musters already mentioned; but we can detect under Edward VI. a tendency to delegate to such commissions powers hitherto exercised by the Council itself; for instance, a committee, of which Cecil was a member, was appointed for the censorship of the press †. Another illustration of this same tendency is given by the issue in 1565 ‡ of commissions to a number of specified men in every county of England for the suppression of piracy, smuggling and similar offences. These functions, or some of them, had always from the time of Henry VIII. been discharged by a commission, controlled by the Council, but it is clear from the entries in the Council Register that efficiency had not been secured, that piracy was still rife, and hence these special local commissions which must have carried the Council's control over every corner of England to a very high degree of perfection. But

* A. P. C., Vol. III., February 28, 1551. This commission is worthy of notice as it illustrates in a remarkable way how little faith the Tudor Council put in the advice of the 'man on the spot.' The Councillors direct 'that it were best to have the division agreed upon by Commissioners not being upon the place, for that they shall on both parts be empeached with the disordered affections of the people there.'

† A. P. C., Vol. II., August 13, 1549.

‡ A. P. C., Vol. VII., November 8, 1565.

this control was further strengthened by a remarkable development in a rather different sphere. The mass of business transacted by the Council had become enormous and the number of members had been steadily increasing. Whereas in August, 1540, the Council numbered only 20, in the first year of Mary's reign it had grown to 44, and included a very large number of persons who bore no special office at all *. Such a simultaneous increase in numbers and in business obviously demanded some specialisation in duties, and accordingly ten committees of Council † were formed, and the following subjects committed to their care:—

1. To call in the debts and provide for money.
2. To give order for the supply of all wants at Calais, Guisnes, and other pieces of those Marches; at Berwick and other places upon the borders of the North; and at Ireland, Portsmouth, the Isle of Wight, and the islands.
3. To give order for the ships and to appoint captains and others to serve in them.
4. To give orders for victuals necessary to be sent to Calais, Berwick.
5. To consider what laws shall be established in this Parliament, and to name men that shall make the books thereof.
6. To appoint men to continue in the examination of the prisoners.

* The attendances too are remarkably full—eighteen members were often present at Mary's councils, as against half-a-dozen in Henry VIII.'s reign.

† A. P. C., Vol. IV., February 23, 1554.

7. To consider what lands should be sold, and who shall be in commission for that purpose.

8. To moderate the excessive charges.

9. To consider the patents and annuities payable in sundry places so as the same may be paid all in one place.

10. To appoint a Council to attend and remain at London and to give order for the furniture and victualling of the Tower.'

It may be noticed that No. 3 was committed to the sole care of the Lord Admiral; and the attention paid to financial matters is also remarkable. The need for a more orderly and simple system of finance was evidently felt; and, in addition, the suppression of the Augmentation Court soon after this necessitated the transfer of some of its functions into other hands, and hence apparently the provisions of No. 7.

The practice thus established of forming committees of Council was not discontinued when Elizabeth came to the throne, but the number formed was smaller, only five separate Committees being named in the arrangement of December 23, 1558*. These were—

1. For care of the North parts towards Scotland and Berwick.

2. To survey the office of the Treasurer of the Chamber and to assign order of payment.

3. For Portsmouth and the Isle of Wight.

4. For consideration of all things necessary for the Parliament.

* A. P. C., Vol. VII.

5. To understand what lands have been granted from the Crown in the late Queen's time.'

The nature of some of both the Marian and Elizabethan committees show that they were only meant to be temporary; but, on the other hand, some, such as that for Parliamentary management which occurs in both lists, evidently had a more permanent use. The specialisation of functions thus effected at the centre, taken together with the increase of local commissions for special purposes throughout the country, must have implied a considerable increase in efficiency, and were great steps onward towards the perfection of the conciliar machinery in the middle of Elizabeth's reign. For it was under the last, and perhaps the greatest of the Tudor sovereigns, that the Council reached its full development; it was then that it showed at once its best and its worst aspects; and it is by an examination of its characteristics at that time that it must be finally judged by history.

VI.

The account already given of the working of the Councils system of local government under Henry VIII. is true, with some modifications, of the reign of Queen Elizabeth. These modifications are, however, very instructive. It has been noticed that the King's Councillors were bound by no red tape in their dealings with local bodies. We have seen that they frequently corresponded over the heads of the local Councils with special officers and commissioners *, and that they sometimes set up small Councils within the sphere of the larger ones to meet the needs of the moment. Now both these characteristics are even more clearly marked in the reign of Elizabeth. Councils were set up both in Connaught and in Munster, and though it is evident from the correspondence between the Governors of Connaught and the Deputies of Ireland that the former regarded the latter as their superiors, yet the Central Council sent its instructions direct to these governors, and did not consider itself bound to use the Lord Deputy's Council as a medium. Again, no one who glances through the two volumes of the Calendar of Border Papers can fail to be struck with the fact that of all the affairs relating to the Border which occupied the attention


* And also with the Justices of the Peace, e.g. *A. P. C.*, Vol. IX., July 8, 1576, where the justices are given orders of such importance with regard to the supply of corn that it is a matter for surprise that they were not communicated to the Council of Wales and the Marches.

of the Sovereign's ministers, there are very few about which instructions were sent to or information received from the Lord President and Council at York. It is with the Wardens of the Marches, with Lords Scrope or Eure, that the Privy Council corresponds, and it is to them that they send their instructions; or, if there happen to be special commissioners appointed at the moment for some particular purpose, it is they who receive letters from, or address reports to, the Central Body. We also remarked, in the early part of this essay, that the Council in the latter years of Henry VIII. was entirely under the control of the King; the reason being that Henry had ceased to give his confidence to any one minister. Thus the Council transacted, in those days, a mass of petty business which can have needed no deliberation, and might very well have been handed over to the attention of one man. Now under the last of the Tudors we find once more a succession of great ministers receiving the confidence and directing the policy of the Crown. Consequently a great deal of correspondence is taken out of the hands of the Council itself; and much of the work relating to the control of local government is performed by Walsingham or Burghley. A very good example of the way in which this system was worked is supplied by the story of the quarrel between Sir John Perrott, Lord Deputy of Ireland, and Sir Richard Bingham, Governor of Connaught.* The latter was in the year 1586 much harassed by an invasion of Connaught by the Scots, and he and his

* This correspondence is among the Duke of Northumberland's MSS.

Council were constantly writing to the Lord Deputy for assistance. Apparently such assistance was not very readily forthcoming, and apparently also Bingham had complained of this to the central authorities, for early in September, Perrott wrote to Walsingham, not to the Council, justifying himself from charges brought against him by Bingham, and enclosing papers showing the income of the governor of Connaught, with the apparent object of proving that it was sufficient. This seems to have been the real cause of quarrel; but it is to be noticed that, so far as we know, the matter had up to this time not been referred to the Privy Council, but only to Walsingham himself. But shortly afterwards Perrott wrote again, and this time to the Council, enumerating his grievances and asking for his recall. The Council had by this time, however, had opportunities of hearing the other side of the question; and on May 2, 1587, it sent a letter to Perrott ordering him to enlarge Bingham's establishment on the ground that 'they were let to understand that Sir R. Bingham's estate was verie weake to answeare the countenance of the government of that Province.' On July 30, another letter was sent, ordering Perrott not to molest any of Bingham's servants during the absence of their master in the Low Countries *. This episode affords some interesting information, for we see—first, that the local governors and their councils were dependent on the Deputy and his council for the defence of their provinces and the financial needs of their govern-

* A. P. C., Vol. XV.



ment; secondly, that when disputes occurred it was to the Secretary and not to the whole Privy Council that both officers forwarded their complaints; thirdly, that when such disputes could not be settled by such means the whole matter was referred to the Council; and, fourthly, that the Central Body was well able to judge the dispute fairly, and was not prone to favour the Deputy against his subordinate as a matter of course, whatever the justice of the case might be. In short, we have here the characteristics of a really good central government—not afraid to set up its own opinion against that of its trusted representative on the spot, yet willing to give that representative the very widest administrative powers, and the most perfect freedom from all restraints except those it imposed itself.

For nothing that has been said must be taken to imply that the power and authority of the great local Councils was in any way weakened. Under Henry VIII. we adduced the instance of the Council of Wales and the Marches, to show what excellent work these local Boards were capable of doing in the suppression of disorder and crime; and, under Elizabeth, the commission issued to this same Council in 1574 is a proof of the immense powers granted to the provincial delegations of the Privy Council.* Twenty members were appointed, but a quorum of two only were empowered to hear and determine 'by their discretions all manner of complaints and petitions, as well within the liberties of her Majesty's Duchy of

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* Miss Skeel, *Council in the Marches of Wales*, pp. 89-94.

Lancaster, the cities of Gloucester, Worcester, and Hereford Salop and Monmouth, the county of the city of Gloucester, the county of the town of Haverford West and within all the cities towns franchises and liberties, within the liberties of their commissions concerning as well the titles of lands and other hereditaments as also personal, real or mixt actions, causes or matters, civil or criminal, exhibited or put unto them by any poor persons, that shall manifestly appear not to be able to sue or defend after the course of common law, or by any person like to be oppressed by maintenance riches, strength, power, degree or affinity of the parties adversaries.' Besides all this, they were directed to issue proclamations at their discretion, to try cases of perjury by jurors who had acquitted offenders in the teeth of 'good and pregnant evidence,' to put down all criminal disorders, to inflict torture where necessary, to check livery, and to execute all manner of penal statutes within the realm. But above all, in accordance with the justice and care for the poor and weak which always characterised in principle the Tudor system of rule, the Council was empowered to try and punish all cases of oppression or corruption on the part of any of the ministers of justice within their sphere of jurisdiction, and also to 'make due and diligent inquiry who hath taken and enclosed any commons or decayed tillage or habitations for husbandry, against the form of the laws and statutes,' and to 'take such order for the redress of the enormities used in the same, as the people be not oppressed or lack habitation.'

VII.

These words may well serve both for the conclusion of a sketch of the Council's system of local government, and for the text of an examination of its action as a court of justice. The judicial side of the Council's activity has as yet only been mentioned, and to describe it fully is to enter on very controversial ground, for three centuries of dispute about the Conciliar Courts have still left many questions unsolved. But none would now doubt that from the very earliest times the King's Council had inherent in it certain very wide judicial powers, which it had delegated in part to bodies like the Courts of Chancery and of the Stanneries. Under the Tudors these powers were further conferred upon two great classes of Courts—first upon the great local Councils we have just been describing, and secondly upon certain Central Courts whose definite establishment was noted at the beginning of this essay—namely, the Court of Star Chamber and the Court of Requests. The authority theoretically vested in these was merely that exercised by the Council itself, however much they may have in practice overstepped those limits; and, broadly speaking, this authority was confined to cases with which the common law was powerless to deal, either from want of sufficient legal principles or from the expense entailed by its proceedings. The third great central

J court, that of High Commission, owed its existence to statute, being created to deal with cases which had only newly come under the jurisdiction of the Crown. A minute examination of each of these great Courts would be outside the scope of this essay; for its object is to describe, not various scattered departments of government, but the entire Council as a united and complete organism; and it is, therefore, necessary to deal, not so much with the nature of these bodies as with their relation to the whole machine.

X J Now the organic action of the Council in judicial matters is based on a great maxim propounded by Sir Julius Caesar in 1597, and dated back by him to 'King Edward the First, his booke of lawes commonly called Brittan fol. 1 *.' This maxim is 'The King of England never did nor doth grant any jurisdiction to any court in his dominions, but so as he still retaineth in himself and his Council, attendant upon his person, a super-eminent authority and jurisdiction over them all.' If any proof of the truth of this is needed it may be found throughout the Acts of the Privy Council in such entries as that of February 23, 1559 †, when the Council of Wales was ordered to send up the leaders in 'a late disorder doone against the Commissioners for the Mizes,' for trial at London, while they dealt with the other offenders themselves; or that of July 30, 1587 ‡, when the Deputy of Ireland was ordered to set at liberty a man whom he had arbitrarily

* Sir Julius Caesar on the Court of Requests, quoted by I. S. Leadam in *Select Cases in the Court of Requests*, p. xxvii.

† A. P. C., Vol. VII.

‡ A. P. C., Vol. XV.

imprisoned—instances of the hold kept by the Central Council over the judicial proceedings of its local Boards, and, therefore, proofs that it retained itself all the powers which it delegated to those Boards. So much was this so, indeed, that a particular subject of jurisdiction might at any moment be taken out of their hands by the Central Body, and entrusted to commissioners instead; as was, for instance, the case with matters of piracy, which were in the province of the Judge of the Admiralty Court, but were nevertheless given by Elizabeth and her Council to special commissioners. But if the justice dispensed by the local Councils proceeded straight from the centre, this is ten-fold more true of the three great central Courts themselves. The Courts of Requests, High Commission and Star Chamber were practically committees of the Privy Council, as may clearly be seen if we examine each of them briefly.

First, then, the Court of Requests, under the presidency of the Lord Privy Seal, had been active, as has already been said, since the beginning of Henry VII.'s reign, though it was probably not at that time called by its later name. In 1525 Wolsey established it definitely at Whitehall; but even then it was apparently the custom, as it certainly was under Elizabeth, to appoint one Master of Requests, who might travel about with the King; for in 1526 Dr. Wolman was appointed a Privy Councillor, and ordered to be always about the King's person 'for the hearing of poor men's causes *.' The peculiarly intimate posi-

* *P. and O.*, Vol. VII., introduction, p. vii.

tion of the Masters of Requests arose from the theory that they were the judges of all petitions presented to the King *. We have already said that they were usually Ordinary Councillors, and on October 6, 1540, the Privy Council directed that the King's and Queen's servants 'should from hensforth in no wise molest his personne with any maner sute, but to put their sutes in writing and delivre the same to such of his Grace's Ordinary Counsaill as was appoynted to attende upon his Majestye's person for those and like other purposes; which Counsaill should take such order in their said sute from tyme to tyme as shall appertain †.' This custom continued to the very end of the period, for Sir Julius Caesar records that 'August the 17th, 1595, her Majesty delivered me bills offered to her and received, going to the Chapel and so possessed me of my ordinary place of Master of the Requests attendant on her Majesty.' In the procedure of the Court a petition to the King was accordingly the usual opening to the proceedings. Now the reign of Edward VI. and the rise to power of the Protector Somerset (a man whose sympathies were really with the poor, especially in the hardships entailed upon them by the rapid inclosure of lands), gave a great impetus to the Court of Requests, and it is the brightest feature in the Privy Council records of this time that they apparently began the custom of

* The office seems to have originated in France, where they were the recognised receivers of petitions. Philip de Commynes says that when the Pisans petitioned Charles VIII. to grant them their liberty in 1494, the request came to the King through the master of the requests.

† *P. and O.*, Vol. VII.

giving regular audiences on fixed days to the Masters of Requests *. The full development of this custom, and the extremely intimate position it gave to the officials of that Court is seen by a curious document dated May 2, 1588, and entitled 'Reasons to persuade that the Judge of the Admiralty is fit to be a Master of Requests.'† Among many other considerations the writer complains that the Council was so vigilant in its control of the Admiralty Court that the Judge had to be frequently coming up to London 'when his presence is required in this office for the entry of strangers' and subjects' causes.' It is noticeable, however, that he does not go on to advocate the relaxation of this vigilance on the part of the central authorities, for that would have been to upset the whole system on which the Conciliar government was based. All he asks is that, whereas now the Admiralty Judge when he is wanted at Court, 'has to wait about at doors or in the yard as a suitor,' he should henceforth be made a Master of Requests and enjoy the privileges of that office. These privileges seem to have been that a Master of Requests had 'his chamber appointed him' and so could be 'always as well occupied in hearing of causes there as he is at his office, and yet be ready to attend on her majesty's Council, or any of them, for despatch of causes.' No further proof is needed that the Masters of Requests were in a quite peculiar degree the servants of the Council and constantly under their supervision.

* A. P. C., Vol. II., November 14, 1549, and March 12, 1550.

† Duke of Northumberland's MSS.

An account has already been given of the erection of the Court of High Commission, for the execution of all duties vested in the Crown in its character of Supreme Governor of the Church. This Court was an extremely large one throughout Elizabeth's reign; for the commissions, which were periodically issued, were addressed sometimes to as many as seventy persons, though the first two, dated 1559 and 1562, only nominated a much smaller body. Among these nominees we find several Privy Councillors, several of the Judges of the Conciliar Courts such as the Masters of Requests, the Judges of the Admiralty, and the Master of the Wards, and several Bishops and other ecclesiastics *. The large Conciliar element in the Court, and the periodical issue of commissions regulating the extent of its powers, would alone have given the Privy Council a very efficient control over it, but besides this, the Council kept its position as supreme judge in all cases whatsoever, and sometimes would take a portion of the kingdom away from the jurisdiction of the Archbishop of Canterbury and his colleagues, as, for instance, it did in the case of Wales in 1579. It reserved to itself the right of making any regulation it might think fit, and, when, in 1585, the bishop of Chester issued certain directions to his diocese, he said that he did so by the recommendation, not of the Court of High Commission, but of 'the right honourable lords of her Majesty's most honourable Privy Council †.' The right hon-

* Prothero, *Statutes and Constitutional Documents* (1898), pp. 227-292.

† Ibid., p. 206.

ourable lords, as appears from their minutes, were constantly sending letters to the Commissioners telling them of cases into which they were to inquire; and there is a remarkable entry on May 28, 1569, recording that certain men were sent to the High Commission Court for the settlement of a dispute, but at the same time were bound by a recognisance *to the Council*, establishing thus a sort of double hold over the prisoners *. It is evident from these instances that the Commissioners for Causes Ecclesiastical must have been met at every turn by the authority of the Central Body; and that their jurisdiction was nothing but the jurisdiction still held and still sometimes used by that body itself.

But if both the Courts of Requests and High Commission were only channels through which the authority of the Council was applied to particular problems—channels which conveyed, but did not, even in their particular sphere, monopolise that authority—the same may also be said in an even greater degree of the Court of Star Chamber, for that body was not a committee of the Council but was the Council itself. From the very earliest times laws had been passed giving sanction to particular sides of the Council's jurisdiction. This had been the object of the Acts 13 Henry IV., cap. 7, 2 Henry V., cap. 8, and 31 Henry VI., cap 2; and the statute 3 Henry VII., cap. 1, can only be regarded as a continuation of these. But the curious point to be observed in dealing with this last great statute is that

* A. P. C., Vol. VII.

it was apparently never observed in its entirety. It provided that 'the Chancellor and Treasurer of England for the time being and Keeper of the King's Privy Seal or any two of them calling to him a Bishop and a Lord of the King's most honourable Council and the two chief Justices of the King's Bench and Common Pleas for the time being or other two justices in their absence . . . have authority to call before them by Writ or Privy Seal . . . etc.' Now research leaves little doubt that Hudson, the apologist of the Star Chamber in the reign of James I., was perfectly right when he said, 'It is fit that I leave it charged, that the Court, after the making of that statute (i.e., The Act "Pro Camera Stellata" of 1487) did usually determine causes when neither treasurer, chancellor, or Privy Seal were present, but sometimes the president of the Council alone, and sometimes assisted by others of the Council *.' Indeed, it could scarcely have been otherwise, for, besides the fact that the Lord Privy Seal was the president of the Court of Requests, which was a peripatetic body up to 1529, the holder of that office under Henry VII. was Foxe, who was constantly employed on diplomatic missions abroad, while the Lord Treasurer from 1501 onwards, was the Earl of Surrey, who was not only a diplomatist but also a soldier. The president of the Council was not added as a judge of the Star Chamber until 1529, and it is between 12 and 13 Henry VII. that Hudson says he finds instances of his presence as a judge. What then are we to

* Quoted in *Select Cases before the King's Council in the Star Chamber, 1477-1509* (Selden Society ed., I. S. Leadam, 1903), p. xlix.

make of a statute which apparently never was, and certainly at the time it was made, never could have been observed? Coke, the great lawyer, saw the difficulty, and attempted to solve it by saying that the statute 3 Henry VII., cap. 1, was 'in the affirmative,' and, therefore, not prohibitive of a multiplication of the number of judges. But, on the other hand, by a judgment of 1493 the Treasurer, Chancellor, and Privy Seal were declared to be the *only* judges of the Court, thus reducing both the justices and the members of the Council mentioned in the Act to the position of mere advisers. This view can, however, be refuted by referring to the case of the Abbot of Shrewsbury * before the Star Chamber in 1504, for here the judgment was made to run in the name of the Chancellor and others, 'the lords of the King's most honourable Council.' These conflicting statements can only be reconciled by one hypothesis. The King's Council had, as we have seen, always had an acknowledged jurisdiction, and the regulations for its proceedings drawn up in the sixth year of Henry VI., provide, among other things, that the advice of the King's Justices shall be taken on all matters dealing with the questions of Prerogative or Common Law. Now in 1453 the Commons passed a statute confirming the Council's traditional judicial powers in order to meet the great disorders prevalent at that moment, and provided for the summoning of evil doers, 'as well by writs under the great Seal as by Letters of Privy Seal.' This Act was limited in operation to

* I. S. Leadam, *Select Cases in the Star Chamber*, p. 188, note 12.

seven years, but there is ample proof that the powers that it conferred were used up to the accession of Henry VII. It would, therefore, seem that the Act 'Pro Camera Stellata' partook merely of the nature of a confirmation and renewal of the temporary sanction of 1453, and that it interfered in no way with the fact that the jurisdiction was the Council's jurisdiction, and the judges the members of the Council *, although it provided that the justices should continue to offer their advice, and that the Chancellor, Treasurer, and Privy Seal should be charged with the duty of obtaining the attendance of the accused by the issue of a writ. And this is fully borne out by the picture of the Court in the time of Elizabeth—at the height, that is to say, of its power under the Tudors. Sir Thomas Smith, in his *Commonwealth of England*, published in 1589, describes it in the following words : † ' In the term time, every week once at the least (which is commonly on Fridays and Wednesdays, and the next day after that the term doth end), the Lord Chancellor and the Lords and others of the Privy Council, *so many as will*, and other Lords and Barons

* It is this which gives the Court its peculiar character, and it is this which justifies the remark made above, that the Star Chamber was not a Committee of Council but was the Council itself. It is true that very few Councillors actually sat, but the few that did were not assisted, as in the Courts of Requests and High Commission, by a multitude of other judges. They had many legal and extra-conciliar *advisers*, but in theory they were the sole final *judges* of the Court. But of course it was always recognised as a separate body from the Council proper—for instance, the Statute of Retainers in 1503 mentions three distinct courts—the Chancellor in the Star Chamber, the King on his Bench, and the King in his Council.

† Quoted Prothero, p. 180.

which be not of the Privy Council and be in the town, and the judges of England, especially the two chief judges, from nine of the clock till it be eleven, do sit in a place which is called the Star Chamber.'

(It will be seen from this that the members of the Privy Council, as the judges of the Court, sat together with, not only the lawyers, but certain other peers, who seem to have been merely advisers summoned for the special occasion.) The Council had, however, its own business to transact, and we should expect the attendance of its members at the Star Chamber to have been small; as a matter of fact, in the instances in which the number of those present is known to us, it only amounts to five or six*. But just as we found, in the case of the Courts of Requests, and High Commission, the Council exercising itself a concurrent jurisdiction, so it is again in the case of the Court of Star Chamber. (The Council frequently dealt with offenders itself, especially when it preferred that its proceedings should be private. For this was the great difference between the Council sitting alone and the Council in the Star Chamber; the proceedings of the latter were always public, and consequently in Elizabeth's reign we find on the one hand the Council expressing resentment at the transfer by a complainant of his case to the Star Chamber†, and on the other Archbishop Grindal being informed by the Queen that 'Her Majesty findeth it expedient

* Notes of the attendance of Councillors in the Star Chamber are among the Duke of Northumberland's MSS. In face of this, it is curious that Coke, in his defence of the Star Chamber should write as he does that a quorum of eight was necessary.

† A. P. C., Vol. VII., December 21, 1570.

to have the world understand her action in this matter; and also to have the Archbishop's misdemeanours declared and to call him to answer for the same; therefore he is to answer thereto in that open place,' *i.e.*, the Star Chamber *. But by far the most remarkable instance of the manner in which the privacy of the Council Board was employed to supplement the publicity of the Star Chamber, is furnished by an entry in the Council minutes of April 1, 1588. In order to bring the power of the Star Chamber to bear on Ireland, Elizabeth had set up at Dublin 'a particular court' to 'be holden within our Castle at our City of Dublin . . . or in such other place where the ordinary term shall be kept in that our realm.' This Court was to be called the Court of Castle Chamber, and was 'to proceed to the examination, discussion, and determination of disorders in the same manner and order as in our Court of the Star Chamber here in England†.' Now, on April 1, 1588 ‡, an appeal had been received by the English Council from one Henry Eyland, late Sheriff of the County of Roscommon. He had been condemned by the Court of Castle Chamber for certain misdemeanours, and demanded a revision of the sentence. The Privy Council accordingly write to the Irish authorities, directing that his request shall be granted, but—and this is the curious point—that this time the case should be heard 'at the Counsell Borde and not in

* J. Strype, *Life of Grindal* (1821), Bk. II., ch. ix., p. 348.

† Prothero, p. 150.

‡ A. P. C., Vol. XVI.

the Starr Chambre, because yt could not in their opinions stand with the honnour and reputation of any suche Court of Justice after a judgement given in the same Court to have yt re-examyned and altered.' This entry throws great light on the way in which the Council acted in its two capacities; and the fact is further emphasised if we remember that such duties as the Censorship of the Press were shifted from the shoulders of the Privy Council proper to those of the Star Chamber, and that the latter also acted as a Court of Assay for testing the coinage. And again, if action was not taken by the Star Chamber, the Council Board would often take the matter into its own hands; and this would, of course, be especially the case during the recess, for both the Star Chamber and the Court of Requests only sat in term-time. Thus, on August 23, 1587*, it wrote two letters, one to the Council of Wales and the other to the President of the North, giving instructions with regard to two cases, which had been brought up to the Star Chamber, and at the same time it acted upon a petition presented by a poor man—a case which would ordinarily have gone before the Court of Requests. It is the same picture of the Council's action that meets us everywhere, its subordinate courts have no independence, there are here no water-tight compartments of government; in whatever court a petition may be preferred or a case ad-

* A. P. C., Vol. XV. This, at least, is the date when it was signed, but the document itself is dated July 16, so it was probably a piece of business which had already been decided and only needed to be dispatched.

judged, it is the justice of the King's Council which is dealt out, and it is the authority of that Council alone on which the judgment rests. Perhaps the best illustration of this is to be found in a document entitled the 'Duties of a Secretary' and belonging to the year 1570*. It deals, among other things, with the process through which judicial cases ordinarily passed when they were sent up to the Council. It lays down that if it relates to a dispute 'between party and party,' the Council decided it itself by 'overruling an obstinate person who is made to acknowledge his fault; or else the parties are remitted to some court of justice or equity or recommended by some letters to some justices in the country.' In the case of more important disputes, however, commissioners were sent down to 'some principal persons to conduct an examination.' If again 'there be a breach of the peace, the lords do either punish the offender by commitment, or do refer the matter to be further dealt with in the Star Chamber, where great riots and contempts are punished.' If, however, 'there be some suits to the queen of poor men, then do the lords endorse their petitions with their opinions and recommend the despatch to the Secretary, or for the poorer sort to the Master of the Requests.'

But if the Conciliar jurisdiction of the Tudor sovereigns was ultimately merely the jurisdiction of this central body of men, who apportioned the work to each of its subordinates as it pleased, then clearly it is not enough—more, it is unfair—to say, as some

* Prothero, p. 166.

writers have said, that the verdict of history condemns the Court of Star Chamber or commends the Court of Requests. The justice administered by the Council, whether through each of these Central Courts or through the local Boards, must be appraised as a whole, and as a whole it must stand or fall.

There is more than one way in which criticism may be directed against it. It may be attacked as unconstitutional or as radically arbitrary and oppressive. That it was unconstitutional may easily be proved. The lawyers of the next generation pronounced the Court of High Commission to be entirely without authority, and it is impossible to deny that the procedure of the Star Chamber was, from this point of view, quite indefensible. The Council had, long before the Tudors, surrendered its right to examine upon oath, yet the Star Chamber employed that method of trial openly and regularly. But when the unconstitutional character of the Conciliar jurisdiction has been proved, are we much nearer to a decision with regard to its merits? The Tudor period was one of much disorder and many anomalies; in the storm and stress of those years men were content to use any instrument that was capable of supplying the needs of the moment, and abstract questions of right were passed over as unimportant by almost all classes. It was not till another generation had arisen and the danger had passed away, that men could say, as Whitelocke said in the debate on the Impositions, that it was better 'to suffer a hurt for a moment than to give way to the breach and violation of the right.'

The constitutional questions of these quieter days had little meaning for the men of the 16th century, and consequently when in 1599 the lawyers condemned the jurisdiction of the Court of Requests, their censures were little heeded. Although some writers have jumped to the conclusion that the Court was forthwith abolished, it is a fact that it flourished exceedingly under the Stuarts. It is far better, therefore, to go at once to the root of the question; to recognise that when nations are fighting for their very existence they are apt to lay their hands upon the most effective, not upon the most conventional tools that they can find, and that History is not called upon to judge the nature of those tools, but to estimate the work which they performed. Must we confess that the work accomplished by the Tudors through their Council was founded upon injustice and oppression, and that its strength was derived from a system of grinding tyranny?

There is much to substantiate such a view. Even making allowances for the odium brought upon the Tudor system of government by the perversions of it that took place under the Stuarts, it is yet evident that in the vast sphere over which it claimed jurisdiction it perpetrated many acts, not to be justified even by the dangers of the times. There was scarcely a crime or a misdemeanour which it did not consider itself competent to try, and when in 1588 Sir Walter Mildmay enumerated the offences which were within the scope of the Star Chamber's powers*, they included Riots, Livery, Maintenance, Forcible entries, Getting

* Duke of Northumberland's MSS.



of moneys by false tokens, Misdemeanours of Sheriffs and Justices of the Peace, Wearing of apparel contrary to statute, Selling wines contrary to statute, Misbehaviour of tenants in the courts of their lords, Corruption and Bribery, Taking of young women from parents, and Perjury by jurors in criminal trials. But besides this conglomeration of great disorders and petty offences, the records of the Star Chamber show that it tried cases of excessive tolls in boroughs, of disputed advowsons, of wrongful impounding of cattle; and the Court of Requests heard cases concerning the tenure of manorial land, unlawful bondage, petty chicanery and the provision of mastiffs for the King. In fact, the only subjects with which Mildmay says that the Star Chamber would have nothing to do, were cases of perjury on the part of jurors in civil trials and all cases of Possession except when dispossession had been obtained by a riot or an unlawful act. And large as was the Council's sphere of action at the centre, its local Boards were, as we have seen, in no way inferior in the powers granted to them. In short, the Council in its various branches took too much upon itself, and the result was very often deplorable. Nor was it wholly unconscious of the fact, for there are frequent notes in its minutes of letters sent to Wales or the North, directing the revision of some hasty or ill-considered sentence. But such miscarriages of justice are quite unimportant when compared with the regular judicial measures employed. Judged by its own records the Council employed torture freely, imposed on trade many restrictions which, however well-meant, were

attended by the most disastrous consequences, and passed sentences whose severity was out of all proportion to the seriousness of the crime. The prisons were crowded, and, as we have seen, a special committee of Council was appointed under Mary to examine those confined in them—a proceeding which was too often accompanied by the infliction of torture. Proclamations of the most arbitrary kind were issued, expelling the Anabaptists and forbidding the extension of London. Accusations of treason were preferred on the most paltry grounds; ridiculous interferences were made in domestic quarrels, and in 1588* the Justices were severely reprov'd for obeying writs of Habeas Corpus on their own authority, and two prisoners were thrown into the Fleet for their 'lewd and contemptuous behaviour' in presuming to employ such writs.

It will perhaps be sufficient to adduce one or two instances in order to substantiate this account of the Council's proceedings. On November 13, 1540, Thomas Thwaytes, a servant of the royal household, was accused of having 'spoken certain traitorous woords against the Kings Majesty; whereupon beyning examined and confessing before the Counsaill the woordes layd unto his charge he was comitted to the porters ward.' On November 16, he was, however, sent to the Tower with a letter to the Lieutenant 'declaring his confession and comaunding him that in case he woold stande still in denyal to showe of whom he had herd the things he confessed, he shuld gyve

* A. P. C., Vol. XVI., April 28 and May 17.

him a stretche or twoo at his discrecion upon the brake.' It was not until May 29, 1541, that he was 'brought before the Counsaile and having a good lesson gyven him to use his tong with more discrecion hereafter was dismissed and set at liberty.' Again, on March 10, 1542, one Bulmer, who had refused, apparently, to give his wife a sufficient allowance, was ordered either to pay her twenty marks for her board at her brother's house, or to 'resorte to her and use her after such a convenient sorte as itt behoveth an honest man to use his wife.' On September 3, 1540, four tapsters 'that vagrauntly followed the courte from place to place and caused the pryce of victalls to be enhaunced contrary to the Kings highness proclamations wer adjudged to be set on the pillory in severall places*.' These three cases are very fair examples of the Council's proceedings under Henry VIII., at the moment—that is to say—when its judicial action was on the whole the most arbitrary and harsh.

A very serious indictment of the Council in its capacity of a Court of Justice has been drawn up. Are there any considerations that can weigh against it? Since we have given instances of the nervous manner in which it was always examining into trivial offences, it is only fair to remember that it examined also into small services rendered to the maintenance of order. Thus, on June 1, 1543, 'the Kings Majesty mynding to have a certain labourer of Guyßnes (who had disclosed to his captain a mutynyye comenced

* All in *P. and O.*, Vol. VII.

by one of his felows) rewarded for his true and loyall dealing . . . wrote his letter under the stampe to the Deputy of Calais requyring him to employ for a rewarde upon the sayde labourer the next room of 6d. by the day in the retynue there at Calais which should furst fall voyde*.' We have given an instance of the employment of the pillory; it is only fair to add that usually the offences for which we find the pillory used were perjury, slander, and forgery. The treatment of the Council's actions with regard to treason has always been grossly unfair. For instance, Sir Harris Nicolas, in his Introduction to the seventh volume of the *Proceedings and Ordinances of the Privy Council*, characterises it as 'perfectly frightful' and proceeds to substantiate his charge by giving three instances. One cannot help being mildly surprised that in the first instance it was so 'frightful' that the prisoner was released after a week; that in the second it was the accusers who were ordered to be strictly examined, not the culprits; and that in the third the accuser 'was very properly sent to prison †!' Neither will most readers be disposed to share in Sir Harris' horror at the treatment of a man who was ordered to pay to the 'owner of a coat which he had cut and mangled such sum as one of the Judges should award,' i.e., in the Star Chamber ‡. That the Council was ready to judge alike the most paltry and the most serious offences is perfectly true, but in days like those of the 16th century that is not necessarily a defect. If we are to state both sides of

* *P. and O.*, Vol. VII. † pp. xxvi. and xxvii. ‡ p. xxxi.


the question fairly, we must admit that there is not a volume of the Privy Council minutes—there is hardly a case mentioned in the records of the Court of Requests—which does not testify to the fact that its vigilance was employed to protect the poor against the rich, the subject against the local official, the villein against his lord. Why should Sir Harris Nicolas pass over in silence such entries as the following? ‘Letters under the stampe wer sent to the President and Counsaill of Wales for the hering and determying of a complaint put up to the Counsaill here by the tenants of Flyntshire against Rogier Brereton, sheriff of the same shire*.’ Surely more valid objections can be brought against the Council than that they ‘commanded the corporation (of Hull) to pay money which was due to individuals, and to take measures for the fortification and improvement of the town †!’ It is quite true that the Council did not ‘respect the rights of individuals or the chartered privileges of Corporations,’ but at least they gave redress to the villein and the serf whom their predecessors had not regarded as possessed of any rights at all. And one thing above all was offered by the Conciliar Courts. As Mr. Leadam has pointed out, at a moment when every other Court of law was venal and corrupt, they at least dispensed a justice which may have been imperfect but was certainly neither bought nor sold ‡.

* *P. and O.*, Vol. VII., September 24, 1540.

† p. LIV.

‡ There are, of course, many instances of pardons being bought by great individuals; but there are no instances of disputed cases being decided by the longer purse.

But in spite of all these great redeeming characteristics, it is very hard for the Englishman of to-day to view with approval the arbitrary action of the Tudor Council. Modern ideas of justice are too strong; the universal acceptation of the theory that, as St. John said at Hampden's trial, the laws should 'run in certain fixed and known channels,' may well blind our eyes to the virtues of a government which recognised no such principle either in theory or in practice. But is there, after all, nothing to be said on the other side? We love to boast that we live under a reign of justice, but do we sufficiently realise that we have purchased that justice at the price of our strength? We are apt to forget that good government is only a relative term; that it implies, in times of peace and tranquility, a strictly impartial and even-handed justice; but that such means are, in times of great danger, wholly inadequate and suicidal. Modern historians recognise this in theory, it is true; but it does not prevent them from laying down the law with regard to statesmen of whose difficulties they cannot form the faintest estimate, and of whose actions they have, therefore, no sufficient standard; it does not prevent them from involving in one crushing denunciation alike Elizabeth, Cromwell, and the younger Pitt. If any such charges are to be substantiated, it is not enough to prove that the government was an oppressive one, it must also be shown that that oppression was not warranted by the needs of the moment, and, therefore, that it was merely selfish and capricious. And it is just by that standard that the Tudor Council is entitled to an acquittal. Except during the few




years of the reign of Edward VI., its action was remarkably free from all traces of self-seeking. Its methods were stern and uncompromising, but they were actuated by no petty appetite for tyranny; its rule was harsh, but it was not unsympathetic; it laid upon the nation many grievous burdens, but their weight was on the whole felt not by the poor, but by the rich, not by the weak, but by the strong. The two most urgent needs of England in the sixteenth century were internal unity and security from foreign attack; and, setting these two aims before their eyes, the Tudor sovereigns were willing to throw all considerations of abstract justice to the winds. It was an unscrupulous policy, but it was not a selfish one, and it was most faithfully carried out by the conciliar machinery that they devised. Those who look at the judicial side of the Council's action will see that many principles of justice were sacrificed in order to place power in the hands of the Central Government; but those who study its administrative work will realise that not one iota of the power thus bought was ever turned to unworthy ends.

It was not used for selfish aggrandisement or for the gratification of a short-sighted love of power; but for the guidance of a nation through the most critical period of its history, and for the founding and building up of institutions which have survived until the present day. That is the only ground upon which the Tudor Council can be defended; for, however much the England of to-day may aspire to be its judge, she must ultimately recognise that she is herself its justification.

VIII.

It is to be feared that the last few pages of this essay have been occupied with a somewhat barren discussion, but it will not have been entirely unprofitable if it has emphasised what is, after all, the central fact of the whole problem. It has been designed to show that the administrative aspect of the Tudor Council's activity is not only the most fascinating but also by far the most important one, for it is only by a right estimate of the Councillors as administrators and organisers, that we can arrive at a true understanding of their value as rulers and as judges. In 1485 England was in a state of utter prostration, she was as absolutely exhausted as was Europe in 1815. But, whereas the men who took up the reins of government in 1815 had a long period of peace and tranquility before them, the Tudors were called upon to guide their shattered vessel through the storms of a second deluge. It was one of those great moments of transition, when all landmarks are swept away, whether they are good or evil, unless some barrier can be raised up against the advancing waters. It was the consciousness of this that led Macchiavelli to exhort his countrymen to build their dykes across the path of the flood *, but though such dykes were raised

* Il Principe, ch. 25. 'Assomiglio quella (i.e., la fortuna) ad un fiume rovinoso che quando e' s'adira allaga i piani, rovina gli



they were too weak for the task, and the storm passed on through the land till it came even to Rome itself. England was faced by the same dangers as Italy, and the Tudors were called upon to do the same work as the Medici or the Sforza. But the barriers that they built were no mere tottering structures thrown up in a moment of panic; they were strong enough to stand when all else fell in ruins, and having passed through those years of peril, they remain even to the present day. The instrument that was used in this great work was no other than the Privy Council, and the days of weariness and toil and suspense are written in its records for all to read who will. Yet we are incapable of understanding the peculiar needs of the time, and that very incapability is in danger of obscuring the meaning of those records. It is hard to realise that what seems to us a tale of petty drudgery carried out by a painstaking but nervous bureaucracy, is really the story of the efforts of statesmen to close up those small crevices in the dyke which in time might undermine the whole fabric. It is only when these men were faced by a danger which we can, at any rate partially, realise, that we can see the true magnitude of their task and the courage with which they accomplished it. At such moments all that is petty and sordid vanishes as if by magic, and we are left suddenly face to face with men who knew that the fate of a nation lay upon their shoulders and

arbori e gli edefici, lieva da questa parte terreno pogendolo a quell' altra . . . non resta però che gli uomini, quando sono tempi quieti, non vi possino fare provvedimenti e con ripari e con argini.'

who proved themselves strong enough to bear the burden.

At no period were these qualities shown in a more brilliant light than during the year 1588 when England was threatened by an overwhelming invasion. If it is true that no country has ever passed safely through a time of greater peril, it is also true that no country has ever possessed a central government which combined in so remarkable a degree a perfect organisation in every department of administration, with great courage, tireless energy, and a perfect grasp of all the details of the defence. The members of the Council had long seen the storm gathering in the distance, and they laboured day and night to prepare for the struggle. In the midst of all their ordinary business they sent their messages into every part of England, calling for ships, and men, and guns; on April 1, 1588*, letters were forwarded to the Lord of Dover, the President of the Marches, and the Lords Lieutenant of seventeen counties, asking for the 'newe mustering of soldiers,' and pointing out former defects in such levies; on the same day notices were issued to thirty-seven coast towns, ordering how many ships and pinnaces they were each to have ready to sail by April 25; on April 16 the Mayor of London was authorised to seize the ordnance belonging to merchant vessels in the Thames, provided he gave good security for them. Commissioners were appointed to examine the defences in every part of the country; Sir John Norris was sent to the Southern

* For this and what follows, see *A. P. C.*, Vol. XVI.



Coast *, Sir Thomas Morgan to Milford Haven †, the manufacture of gunpowder was supervised, its issue regulated, and its waste by the trained bands reprimanded ‡; orders, sometimes of the minutest kind, were sent to Lord Howard and Sir Richard Grenville; directions as to the victualling of the different contingents of ships or the equipment of local levies were constant and detailed; and time was even found, on March 28, to choose the doctors for the Navy, and to send them to take up their duties. When we see the minute knowledge possessed by the Council, of details in every corner of the country, we cannot avoid the conclusion that they must have been served by a body of commissioners equal or superior to those employed by the Committee of Public Safety in revolutionary France. The information derived by the Council through them was accurate and sufficient, and the instructions sent to them in return were carried out without carelessness or hesitation. Any neglect of duty, or disobedience to orders, was visited with immediate and severe censure from the ministers of the Crown; and thus, for instance, Sir Francis Gilborne, who had ignored some orders received from Drake, was written to by the Council on April 1 in no mild or measured terms. But though its hand lay heavy on all sluggards and offenders, its touch could be very light, and sensitive to any real grievance, and not a few times we notice that poor towns were granted a dispensation from the contingents which they had been told to supply, as, for example, in the

* April 5.

† April 24.

‡ April 9 and 12.

cases of Poole and Chichester *. This trait in the Council's character has been far too little noticed; its harshness has passed into a proverb, but such acts show that it could be very lenient when leniency was demanded by justice, even in times of extreme danger and necessity. During all these months it is not too much to say that the fate of England lay in the hands of the men, seldom more than nine or ten in number, who sat round the Council table; for on the commissioners they appointed, the information they received and the directions they issued, depended the success or failure of the whole defence. They gave order and unity to all the operations throughout the country; and in the days of suspense, when the Armada was actually in the Channel, they were tireless in calling out all the reserves of gunpowder for the Fleet, in summoning the county levies, and in preparing the South of England to repel an invasion in case the Duke of Parma should succeed in effecting a landing†. Those days of suspense were long protracted; even after the Spanish Fleet had been scattered no man could tell where they might re-unite or on what part of the island they might make a descent; and it was not till November that the Council could really relax its vigilance in the certainty that safety was assured. On the third of that month we find letters to the Archbishop of Canterbury entered in the minutes, directing that a Public Thanksgiving should be offered, 'wherein all the Realm might concur in

* April 9.

† Passim throughout June and July.



giving public and general thanks unto God for His gracious favor extended towards us in our deliverance and defence.'

The events of these months form the best justification of the Tudor system of government; they show us the conciliar machinery at the moment of its greatest efficiency; and they mark, perhaps, the highest point ever reached by the Privy Council—the zenith of its prestige and power. And there it will be best to leave it. Darker days were coming upon it; before the end of Elizabeth's reign its decline had already begun, Cheshire and Bristol were challenging the authority of the Council in the Welsh Marches, and dispute had begun to rage round the Star Chamber and the Court of Requests. Such signs showed clearly that its work was done and that its time was past; and these last years are but a poor conclusion to the period. Yet, if there is one picture in English history which those who have once looked upon it, are never likely to forget, it is the picture which stands out vividly from the pages of the Privy Council Records under the Tudors. Those who go to history to find food there for denunciation or criticism, may point, if they will, to the blots upon those pages—to the oppression and injustice of Henry VIII., to the factions and corruption under Edward VI., to the religious and political persecutions of Elizabeth and Mary. But those who seek to appreciate, rather than to condemn, the work done by their forefathers, will prefer to read in those annals the story of men who were not afraid of the responsibility laid upon them nor shrank from the

power that was put into their hands—men, who were strong enough to be the leaders and the guides of a nation in its days of storm and stress—men, who, whatever their faults or their shortcomings, gave their whole lives and talents to the work they had begun, and, having laid their hand upon the plough, were never known to falter or turn back. Through a century of religious and political unrest, these men held England in the bands of an iron discipline; they watched over her commerce; they provided for the defence of her shores; they reduced her lawless provinces from chaos to order and good government; they gave to her poor a justice that was unstained by corruption; to them she owed her unity and her strength; and to them, and to the great organisation whose members they were, she can at least accord to-day the title of the strongest and most patriotic government that she has ever known.

